



Henry Wray

Mr. Wray has served as Assistant General Counsel for the Special Studies and Analysis section, Office of the General Counsel, since January 1978. He joined GAO in 1971 and worked as an attorney for the General Government Matters section of OGC before assuming his current position. Mr. Wray holds a B.A. degree from Washington and Jefferson College, Washington, Pa., and a J.D. degree from the George Washington University Law School.

The General Accounting Office Act of 1980: The End of a Long Legislative Road



As President Carter signs the General Accounting Office Act of 1980 he is watched by Comptroller General Staats, Senator John Glenn, Representative Jack Brooks and congressional and OMB aides. (White House photo).

On April 3, 1980, the President signed H.R. 24 into law as the "General Accounting Office Act of 1980." This legislation—often referred to in GAO as the "omnibus bill"—(1) authorizes audits by GAO of "unvouchered" expenditures; (2) enables GAO to enforce its access to records rights in the courts; (3) imposes requirements on GAO's draft report comment process; (4) provides for enhanced congressional participation in the appointment of the Comptroller and Deputy Comptroller General; and (5) requires certain executive agency inspectors general to comply with GAO auditing standards.

At the time he signed the bill into law, President Carter noted that:

**** this legislation is the product of extensive discussions between the Executive branch and the Congress.²*

During Senate consideration of the legislation, its floor manager, Senator Glenn, stated:

**** this bill is a milestone in executive-legislative branch relations and resulted from a prodigious amount of staff work that included protracted negotiations with the administration and the GAO, both of whom support its passage.^{***3}*

These statements are certainly true of H.R. 24, but they apply with equal force to a long line of prior bills which are the roots of H.R. 24. In fact, the origins of the General Accounting Office Act of 1980 can be traced back for at least a decade to bills introduced in 1970 and most years thereafter. This article describes the extensive legislative efforts that culminated with enactment of H.R. 24.

The First Bill— S. 4432, 91st Congress

On October 2, 1970, the Senate Committee on Government Operations reported as an original bill S. 4432, 91st Cong., the proposed "Budget and Accounting Improvement Act of 1970." If any one measure can lay claim to being the original "omnibus bill" it is S. 4432.

This bill resulted from hearings held by the Senate Government Operations Committee in the fall of 1969 which constituted the first comprehensive review of GAO by that committee since Mr. Staats had become Comptroller General.⁴ The committee report summarized the basic purposes and provisions of S. 4432 as follows:

The purpose of this bill is to strengthen and broaden the operations under the Comptroller General's Office in order to provide more effective service to Congress. To achieve this, the bill [1] assigns new responsibilities to the Comptroller General in analyzing and auditing Federal expenditures and reduces certain outmoded statutory auditing requirements relative to Government corporations and certain other special Federal operations; [2] changes the name of the General Accounting Office to the Office of the Comptroller General of the United States; [3] grants the Office authority to employ experts and consultants and subpoena records which it is presently authorized to review; [4] provides authority for the Comptroller General to institute suit and to appear in court, with his own counsel in certain instances; and [5] enlarges the role of the Office in examining the operation of ongoing programs and establishes a new program of analyzing legislative authorization and appropriation proposals. This is designed to make its activities more relevant and meaningful to the Congress in the 1970's.⁵

While S. 4432 was not enacted, a number of its provisions became law during the early 1970's. For example, specific program evaluation authorities along the lines of

those proposed in S. 4432 were contained in the Legislative Reorganization Act of 1970 as amended by the Congressional Budget Act of 1974.⁶ Likewise, the "General Accounting Office Act of 1974" revised a number of statutory audit requirements and authorized the Comptroller General to employ experts and consultants.⁷ Other provisions of S. 4432—changing the name of the GAO and authorizing the Comptroller General to test his legal decisions in court—were eventually abandoned.

The remaining item in S. 4432—granting GAO subpoena power—provides the most consistent thread between the 1970 bill and the General Accounting Office Act of 1980. Section 601 of S. 4432 read:

To assist in carrying out his functions, the Comptroller General may sign and issue subpoenas requiring the production of negotiated contract and subcontract records and records of other non-Federal persons or organizations to which he has a right of access by law or agreement.

Section 602 authorized the Comptroller General to obtain judicial enforcement of subpoenas.

The language of S. 4432 is quite similar to the subpoena power enacted this year, which enables GAO to enforce its access rights against non-Federal parties. However, S. 4432 did not include provisions for enforcement of GAO's access rights against Federal agencies. The Senate report on S. 4432 focused upon GAO's occasional difficulties in getting contractor records, and observed:

**** in the simplest terms, [1] the subpoena would enable the Comptroller General to obtain much quicker resolution in the courts of any dispute over his authority and [2] the power to issue a subpoena would, by its very existence, eliminate many disputes which may be raised merely to create delays.⁸*

The Senate passed S. 4432 by a voice vote on October 9, 1970,⁹ but no action was taken on the House side for the remainder of the 91st Congress.

92d Congress

Very little transpired in the 92d Congress by way of legislation affecting GAO's basic functions. Senator Ribicoff introduced as S. 1022 the same bill that the Senate had passed the year before as S. 4432. However, no action was taken on this bill.

The only other development of interest occurred on October 19, 1971, when Senator Ervin introduced S. 2702, a bill to authorize the Comptroller General to bring suit for declaratory and injunctive relief against any executive branch official:

**** whenever the Comptroller General, in the performance of any of his functions authorized by law, has reasonable cause to believe that such officer or employee is about to expend, obligate, or authorize in an illegal manner, the expenditure or obligation of public funds over which the Comptroller General has account settlement authority.*

This bill, which GAO supported at the time,¹⁰ was designed to provide a means for judicial resolution of disagreements between the Comptroller General and the Attorney General over the legality of Federal expenditures. It would have enabled GAO to prevent expenditures which GAO considered illegal before they occurred, rather than limiting our recourse to "taking exception" to payments already made.

The approach taken in S. 2702—which had been included as well in S. 4432, 91st Cong., and S. 1022, 92d Cong.—actually had its origins in the late 1960's as the result of a notable difference of opinion between the Comptroller General and Attorney General over the legality of the so-called "Philadelphia Plan," an affirmative action program developed by the Labor Department for application to Federal contractors. The Comptroller General had ruled the plan illegal, but the Attorney General later disagreed and stated that his opinion should take precedence over the Comptroller's.¹¹ The Senate then considered an appropriation rider that read as follows:

In view of and in confirmation of the authority vested in the Comptroller General of the

*United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any Federal statute.*¹²

President Nixon objected to the appropriation rider on the ground that it would prevent court review of the underlying legal issues. The President observed:

*When rulings differ, however, when the chief legal officer of the executive branch and the chief watchdog of the Congress end up with opposing views on the same matter of law, the place for resolution of such differences is the courts—just as it is for the resolution of differences between private citizens.*¹³

He suggested that the appropriation rider "should be modified to permit prompt court review of any differences between legal opinions of the Comptroller General and those of the executive, and to permit the Comptroller General to have his own counsel (rather than the Attorney General) to represent him in such cases."

The appropriation rider was rejected. S. 2702, which would have implemented the alternative approach suggested by the President, received no action in the Congress.

93d Congress

GAO took a more active role in seeking legislation during the 93d Congress. On June 20, 1973, the Comptroller General submitted to the Congress a comprehensive draft bill captioned the "Accounting and Auditing Act of 1973." This draft was introduced in the Senate by Senators Ervin, Metcalf, and Ribicoff as S. 2049.¹⁴ Representative Gibbons introduced a companion House version as H.R. 9002.¹⁵ Representatives Holifield and Horton also introduced the bill, by request, as H.R. 9091.¹⁶

The comprehensive 1973 bill contained a number of provisions,

which can be summarized as follows:

- Title I provided for judicial enforcement of GAO decisions, along the same lines as S. 2702, 92d Cong., and other provisions discussed above.
- Title II provided for the issuance and enforcement of subpoenas against non-Federal persons where GAO had a right of access. This language followed language in the 1970 Senate-passed bill, S. 4432, 91st Cong.
- Title III provided for GAO to assist the Congress in developing budget, fiscal, and program information. This is similar to the language added to section 203 of the Legislative Reorganization Act of 1970 by the Congressional Budget Act of 1974, 31 U.S.C. §1153 (1976).
- Title IV expanded GAO's access rights to records of non-Federal parties to cover—

*Each recipient of Federal assistance pursuant to grants, contracts, subgrants, subcontracts, loans, or other arrangements, entered into other than by formal advertising***.*

Title IV also proposed for the first time a judicial remedy for GAO's access problems with Federal agencies. The bill provided that if a Federal agency had not granted GAO access within 20 days after a formal request, the Comptroller General could sue—

*For the purpose of declaring of the rights and other legal relations of the parties *** and no further relief shall be sought by the parties or provided by the court.*

In other words, the court would merely determine whether GAO was or was not entitled to records; it would not issue any orders enforcing access. The bill provided for a three-judge Federal court to hear access questions. It also incorporated a congressional veto mechanism to prevent GAO from bringing suit if either House of Congress disapproved.

- Title V of the bill granted the Comptroller General exclusive custody and control over the GAO building.
- Title VI authorized GAO to conduct "profits studies" of Government contractors or subcontractors doing more than \$1 million of business with the Government in a fiscal year.¹⁷
- Title VII allowed the Comptroller General to fix the limit for statistical sampling of vouchers, in lieu of the statutory limit of \$100 per voucher then in effect,¹⁸ and required GAO to evaluate statistical sampling procedures in its audits of accounting systems.
- Title VIII proposed to transfer primary responsibility for audits of transportation payments from GAO to the Office of Management and Budget.
- Title IX authorized GAO to audit nonappropriated fund activities.
- Title X authorized the Comptroller General to hire experts and consultants.
- Title XI changed the frequency requirements for GAO audits of Government corporations from every year to once every 3 years; and title XII placed on a discretionary basis other requirements for annual audits.

As it turned out, the 1973 legislation was a little too comprehensive, and it languished in committee in both Houses. The strategy to get the legislation moving, developed by GAO and congressional staff members, was to divide the comprehensive bill into two separate measures. In letters to Senator Ervin and Representative Holifield dated December 19, 1973, the Comptroller General formally suggested that the two new measures be substituted for the comprehensive bill:

**** we believe that consideration of the various provisions of S. 2049 could be simplified and expedited if the bill were divided into two separate bills: one dealing with relatively straightforward provisions relating to largely routine*

*changes in this agency's activities and a second bill dealing with what may be considered more profound and complex issues relating to our functions.*¹⁹

And so were born the "controversial" and "noncontroversial" GAO bills. The "controversial" bill, called the "Accounting and Auditing Act of 1973," consisted of the following provisions from the comprehensive bill: judicial enforcement of GAO decisions (title I); subpoena power (title II); budget, fiscal, and program information (title III); access to records (title IV); and the profits study authorization (title VI).

The "noncontroversial" bill, labeled the "General Accounting Office Act of 1973," included the remaining provisions from the comprehensive bill: statistical sampling (title VII); transfer of transportation payment audits (title VIII); nonappropriated fund audits (title IX); employment of experts and consultants (title X); control over the GAO building (title V); and changes in the frequency of statutory audit requirements (title XI and XII).

Senator Ervin introduced the noncontroversial bill as S. 3013, and the controversial bill as S. 3014.²⁰ On December 21, 1973, Representatives Hollifield and Horton had likewise introduced these bills as H.R. 12113 and H.R. 12114, respectively.

The predictions underlying the splitting of the GAO bill proved to be accurate. The "controversial" bill went nowhere. However, the "noncontroversial" bill was enacted as the "General Accounting Office Act of 1974" in much the same form as first introduced.²¹

94th Congress

The "controversial" bill was introduced again the next year as S. 2268, "General Accounting Office Act of 1975."²² This bill was identical to the prior year's version except that it omitted the title on budget, fiscal, and program information, the substance of which had been included in the Congressional Budget Act of 1974.

Earlier in the first session of the 94th Congress, Senator Metcalf and Representative Brooks had introduced bills which in some respects provide the antecedents of the

provisions in the General Accounting Office Act of 1980 concerning the appointment method of the Comptroller General and the Deputy Comptroller General. Senator Metcalf's bill, S. 2206, proposed to have the Comptroller and Deputy Comptroller General appointed by the Speaker of the House of Representatives and the President *pro tempore* of the Senate, after consideration of recommendations from the House and Senate Committees on Government Operations. It would also have reduced the Comptroller's term of office from 15 to 7 years and provided for the Deputy's term to coincide with the Comptroller's. Finally, it provided for removal of the Comptroller or Deputy by simple resolution of either House of Congress. Another bill (S. 2205), which Senator Metcalf introduced on the same day, likewise provided for congressional appointment of the Librarian of Congress, the Architect of the Capitol, and the Public Printer. The Senator described these two bills as "together constitut[ing] a congressional declaration of independence from the White House."²³

Hearings on several bills, including S. 2206 and S. 2268, were held by Senator Metcalf's Subcommittee on Reports, Accounting, and Management, Senate Committee on Government Operations, on October 2, 1975. While the Comptroller General supported S. 2268, he opposed S. 2206. Neither bill was reported from committee.

Representative Brooks' bill, H.R. 8616, also provided for congressional appointment of the Comptroller General as well as the officials covered by Senator Metcalf's S. 2205. The Brooks bill provided for the Comptroller General to be nominated by the Joint Committee on Congressional Operations, appointed by the Speaker of the House and the President *pro tempore* of the Senate, and confirmed by a majority vote of each House of Congress. H.R. 8616 also provided for the Comptroller to appoint his own Deputy, who would serve at the pleasure of the Comptroller. Finally the bill reduced the Comptroller's term to 10 years and provided for his removal by concurrent resolution of the Congress.²⁴

The next several years saw no formal legislative initiatives along the lines of S. 2268 and other versions of the "controversial" GAO bill. The closest legislation was H.R. 12729, 94th Cong., introduced by Representative Abzug on March 23, 1976, for the purpose of—

**** affirm[ing] the authority of the Comptroller General to have access to any books, documents, papers, or records of any Federal department or establishment for managerial and operational as well as for fiscal reviews and evaluation.*

The Abzug bill was designed to overcome GAO's problems in gaining access to FBI records and to respond to the argument occasionally raised by executive branch officials that GAO's access was limited to records relating to financial matters. The bill would have added to GAO's basic access authority under section 313 of the Budget and Accounting Act, 1921, 31 U.S.C. §54, and explicit provision that our access rights—

**** shall not be restricted to only those books, documents, papers, and records pertaining to the receipts, disbursement, or application of public funds, but shall extend to all books, documents, papers, or records within the possession or control of any such department or establishment.*

The Comptroller General supported the Abzug bill since it endorsed GAO's current legal position, but pointed out that what was really needed was an enforcement authority such as the access remedies proposed in S. 2268.²⁵

While progress was slow toward enactment of a general access enforcement remedy for GAO, significant developments had occurred, and continued to occur in some areas.

On May 7, 1974, the Federal Energy Administration Act was signed into law converting the old Federal Energy Office into a new statutory agency.²⁶ Section 12 of the act, 88 Stat. 106 (15 U.S.C. §771), gave GAO broad authority to monitor and evaluate the operations of the Federal Energy Administration. This audit authority was accompanied by an equally broad

grant of access to information materials from—

**** any person owning or operating facilities or business premises who is engaged in any phase of energy supply or major energy consumption, where such material relates to the purposes of this Act ***.*

Also, section 12 gave the Comptroller General subpoena power, for the first time ever, in connection with his broad audit and access rights under the act. This subpoena power could only be exercised, however, with the prior concurrence of an appropriate congressional committee reflected by adoption of a committee resolution.

In late 1975, title V of the Energy Policy and Conservation Act was enacted.²⁷ This legislation granted the Comptroller General authority to conduct verification examinations with respect to persons submitting energy information to designated Federal agencies. Title V also granted the Comptroller General authority to issue and enforce subpoenas in connection with verification audits and to issue orders imposing civil penalties on persons who refused to grant GAO access. Unlike the Federal Energy Administration Act, use of the title V enforcement remedies was not made subject to prior congressional approval.

Section 6 of the Medicare-Medicaid Anti-Fraud and Abuse Amendments, enacted in 1977,²⁸ added a new section 1125 to the Social Security Act, 42 U.S.C. §1320a-4, which granted the Comptroller General authority to issue and enforce subpoenas for the production by any person of information relevant to GAO audits of programs authorized under the Social Security Act.

Section 207 of the Department of Energy Organization Act²⁹ applied GAO's authority under section 12 of the Federal Energy Administration Act, discussed above, to all functions of the newly established Energy Department.

In addition to the legislation granting GAO subpoena power in particular instances, the Congress also enacted legislation dealing with longstanding access disputes between GAO and certain Federal agencies. The act, approved Octo-

ber 7, 1977, Public Law 95-125, provided express statutory authority for GAO audits of the Internal Revenue Service and the Bureau of Alcohol, Tobacco, and Firearms of the Treasury Department.³⁰ The act thus removed objections by executive branch officials that GAO had no right to conduct program audits of the IRS and BATF.

The Federal Banking Agency Audit Act, approved July 21, 1978, as Public Law 95-320, granted GAO audit and access to records authority with regard to the Federal bank regulatory agencies.³¹

H.R. 12171, 95th Congress

While no comprehensive GAO bill was introduced in 1976 and 1977, there were extensive behind-the-scenes discussions among GAO officials and congressional staff members. By the fall of 1977, these discussions had focused on the following potential subject areas for a bill: GAO audits of so-called "unvouchered" expenditures; general access to records enforcement powers; revisions in the method of appointment of the Comptroller General and Deputy Comptroller General; GAO's process of getting agency comments on draft reports; revisions in the system governing GAO personnel; and revision of the Comptroller General retirement provisions. Other subject areas of prior year GAO "omnibus" bills—enforcement of legal decisions and permanent authority to conduct profit studies—had been dropped.

On February 28, 1978, the Comptroller General formally transmitted a package of three draft bills to Chairman Brooks of the House Committee on Government Operations and Chairman Ribicoff of the Senate Committee on Governmental Affairs.³² One draft bill proposed to amend the Comptroller General's retirement and survivorship law; another was the GAO personnel legislation.³³ The third draft bill, captioned the "Federal Accounting and Auditing Act of 1978," was the latest version of the "controversial" GAO bill. On April 18, 1978, Chairman Brooks introduced the proposed Federal Accounting and Auditing Act of 1978 as H.R. 12171, 95th Congress.

As originally introduced, H.R. 12171 had three basic provisions (the first section being the "short title" of the bill), which may be summarized as follows:

- Section 2 of the bill proposed to amend section 117 of the Accounting and Auditing Act of 1950 by adding a new subsection providing for GAO audits of "unvouchered" expenditures; *i.e.*, "expenditures *** accounted for solely on the approval, authorization, or certificate of the President of the United States or an official of a department or establishment ***." The Comptroller General was granted access to such information as he deemed necessary "to determine whether the expenditure was, in fact, actually made and whether such expenditure was authorized by law." The proposed unvouchered expenditure audit can be traced back to concerns expressed in earlier years by Representative Eckhardt that greater accountability was necessary in the use of confidential funds. Much of the language in section 2 of H.R. 12171 was taken from a bill introduced by Representative Eckhardt in 1977.³⁴
- Section 3 of H.R. 12171 proposed to give GAO across-the-board authority to enforce its existing access rights with regard to Federal agencies and non-Federal parties. It would have amended section 313 of the Budget and Accounting Act, 1921, to provide that if any department or establishment failed to make records available to GAO within 20 days after a request under the 1921 act or any other provision of law or agreement granting the Comptroller General access, the Comptroller General could bring an enforcement action in the United States District Court for the District of Columbia. Section 3 also granted the Comptroller authority to issue, and enforce in the courts, subpoenas "requir-

ing the production of contractor and subcontractor records pertaining to negotiated contracts and records of other non-Federal persons or organizations to which he [the Comptroller] has a right of access by any law or agreement." This authority was similar to earlier GAO bills.

- Section 4 of the bill revised the procedure for appointment of the Comptroller General and the appointment and term of the Deputy Comptroller General. The bill retained the feature of the present law that the Comptroller be appointed by the President, subject to Senate confirmation, but it required the President to make his appointment from a list of persons submitted to him by a commission composed of the Speaker of the House, the President *pro tempore* of the Senate, the majority and minority leaders of the House and Senate, and the chairman and ranking minority member of the House Government Operations Committee and the Senate Governmental Affairs. After consultation with the President, the commission would submit at least three names to the President. The President could request additional names. Finally, section 4 provided that the Deputy Comptroller General be appointed by, and serve at the pleasure of, the Comptroller General. This would have eliminated the Presidential appointment for the Deputy and also the statutory 15-year term of office.

Hearings on H.R. 12171 were held on May 17 and June 26, 1978.³⁵ Comptroller General Staats testified in support of all provisions in H.R. 12171. However, the bill was opposed by Larry A. Hammond, a Deputy Assistant Attorney General with the Justice Department. Mr. Hammond's objections centered on sections 3 and 4 of the bill. He suggested that, while the section 3 access enforcement provisions as applied to Federal agen-

cies were probably constitutional, it would be preferable to leave such access disputes for informal resolution without involving the courts. He also testified that the proposed change in the appointment process for the Comptroller General under section 4, requiring the President to nominate from a list of names submitted by congressional officials, would violate the Appointments Clause of the Constitution (Article 2, §2, cl. 2) since the Comptroller performs some "executive" functions.

On September 19, 1978, the House Committee on Government Operations favorably reported H.R. 12171 without amendments.³⁶ However, two changes were made in the bill before it was brought up for House action. First, language was added to the unvouchered expenditure provisions in section 2 to authorize the President to exempt from GAO audit sensitive information concerning foreign intelligence and counterintelligence activities. Exempted transactions were to be reviewable by the House and Senate Intelligence Committees. Second, the provisions in section 4 concerning the appointment and term of the Deputy Comptroller General were modified to meet potential Senate objections. The modification returned the Deputy to a presidential appointee, subject to the new appointment procedures applicable to the Comptroller. Also, rather than have the Deputy serve at the pleasure of the Comptroller, the Deputy's term was made to expire at the same time as the Comptroller's.

The full House passed the bill by voice vote on October 3,³⁷ but the Senate did not act on the bill. In the waning days of the 95th Congress, an attempt was made to secure Senate passage of H.R. 12171. However, when it became clear that the only provision that could pass at that stage was the subpoena power for non-Federal parties, the congressional sponsors, in consultation with GAO officials, decided not to push for Senate passage.

H.R. 24 and S. 1878

It was back to the drawing board with the GAO bill when the 96th Congress convened in January

1979. However, very little time was lost. On the first day of the new Congress—January 15, 1979—Representative Brooks introduced H.R. 24, the "General Accounting Office Act of 1979."³⁸ The introduced version of H.R. 24 was quite similar to the bill that passed the House the year before. It included the unvouchered expenditure audit provision as section 101, enforcement of access to records as section 102, and the provisions relating to the appointment of the Comptroller and Deputy Comptroller General as section 104.

The 1979 bill also included two new provisions. Section 103, captioned "Availability of Draft Reports," provided that a draft GAO report could not be made available for agency comments for period in excess of 30 days, unless the Comptroller General determined that a longer period was necessary and was likely to result in improving the accuracy or reliability of the report. Section 103 further provided that GAO could solicit agency comments on "only those portions of such reports which contained, in the opinion of the Comptroller General, factual determinations and conclusions ***." Finally, H.R. 24 contained a title II, which required the Inspectors General of the Department of Energy and the Department of HEW to conform to GAO auditing standards.

Introduction of H.R. 24 was followed by a period of intensive but protracted discussions involving GAO and executive branch officials, presided over by the staff of the House Government Operations Committee. The object was to arrive at a version of the bill that all parties could support. The result of these initial efforts was an "Amendment in the Nature of a Substitute to H.R. 24," prepared by the committee staff.³⁹ The amendment made several significant changes in H.R. 24. It added to section 102 a requirement that the Comptroller General give the Attorney General an additional 20 days notice before an action to enforce access against a Federal agency could be initiated. It removed from section 103 the prohibition against GAO obtaining comments on portions of draft reports other than factual determinations and conclusions. The

new section 103 added a requirement that whenever GAO requested agency comments on a draft report, the draft was to be made available upon request to certain congressional officials. Also, the Comptroller General was required by the new section 103 to prepare and issue with the final version of the report a statement of any significant changes from prior drafts in the findings, conclusions or recommendations which were based on the agency comments, and the reasons for such changes. Finally, and perhaps most significantly, the amendment changed section 104 to provide that the congressional commission "recommend" individuals to the President for appointment as Comptroller General and Deputy Comptroller General. No longer was the President legally required to nominate candidates from those names submitted by the commission.

The Amendment in the Nature of a Substitute did meet some of the objections that had been raised to the bill. The changes in section 104 removed the Justice Department's constitutional objection to the appointment provisions. However, the executive branch officials stood firm in their objections to sections 101 and 102, particularly the access enforcement remedy against Federal agencies, and Director McIntyre of the Office of Management and Budget testified against these sections of the bill.⁴⁰

Notwithstanding the executive branch objections, the House Committee favorably reported H.R. 24, with the text of the Amendment in the Nature of a Substitute, by a vote of 33 to 0.⁴¹ On October 29, 1979, the full House passed H.R. 24 under suspension of the rules.⁴² The only change from the reported version of the bill was a provision, requested by the House Permanent Select Intelligence Committee and agreed to by Representative Brooks, which precluded use of the access enforcement remedies in section 102 to obtain information relating to presidentially designated foreign intelligence or counterintelligence activities.

With House passage of H.R. 24, attention once again turned to the Senate, where H.R. 12171 had died the year before. However, the result

would be different this time. On October 11, 1979, Senator Glenn introduced a Senate version of the General Accounting Office Act of 1979 as S. 1878.⁴³ This bill was very similar to the House-passed bill except that it omitted the provisions on GAO draft reports.

On October 16, 1979, Senator Glenn's Subcommittee of the Senate Committee on Governmental Affairs held hearings on S. 1878.⁴⁴ The only witnesses at the October 16 hearing were Comptroller General Staats and other GAO officials. They supported S. 1878 in full, but recommended that the House-passed language on GAO draft reports be added to the Senate bill. At this point it appeared that the bill might have clear sailing, as no executive branch official had accepted the Senate Subcommittee's invitation to testify. However, it soon became clear that the executive branch objections had not dissipated. Several executive agencies sent letters to the Senate Committee opposing the bill, and on December 6, 1979, Deputy Assistant Attorney General Hammond again testified against the legislation. Once more the executive branch objections focused upon the section 102 access to records enforcement remedy against Federal agencies.

These objections prompted another round of internal negotiations, this time under the auspices of the Senate Subcommittee staff. The Senate negotiations resulted in a rewrite by Senator Glenn of section 102 of the bill, which ultimately provided the compromise leading to enactment of the bill. The essence of this amendment was to specify certain categories of information for which the Comptroller General could not invoke his access enforcement authority. The first exemption was the same as an exemption contained in the House-passed bill, covering material relating to foreign intelligence or counterintelligence activities designated by the President. The second and third exemptions were new, and applied as follows:

[2] *If such material is specifically exempted from disclosure to the Comptroller General by statute provided that such statute [A] required that the material be*

withheld from the Comptroller General in such a manner as to leave no discretion on the issue, or [B] establishes particular criteria for withholding from the Comptroller General or refers to particular types of matters to be withheld from the Comptroller General; or

[3] *If the President or the Director of the Office of Management and Budget within 20 days after the filing of a report under subsection [b] [1], certifies in writing to the Comptroller General, the Speaker of the House of Representatives and the President of the Senate, that [A] such material consists of matters which can be withheld from disclosure under section 552[b][5] or 552[b][7], of title 5 United States Code and [B] the disclosure of such material to the Comptroller General could reasonably be expected to substantially impair the operations of the Federal Government. Such certification shall be nondelegable by the President or by the Director of the Office of Management and Budget and shall be accompanied by a full explanation of the rationale therefore.*

The second exemption represented the heart of the compromise. It enabled the President or the Director of OMB to prevent GAO from going to court to get access to records that (A) could be withheld from the public under the Freedom of Information Act as either internal advice memoranda or law enforcement files if (B) the President or Director certified that giving GAO access "could reasonably be expected to substantially impair the operations of the Federal Government."

Senator Glenn proposed several other amendments to the Senate bill. One of these amendments allowed the President to exempt from section 101, unvouchered expenditure audits, transactions relating to certain domestic law enforcement investigations. Another Glenn amendment required OMB to produce a listing of unvouchered expenditure accounts. A third amendment limited the number of congressional committees that could receive reports on GAO's unvouch-

ered expenditure audits. Lastly, Senator Glenn offered an amendment adding the House-passed language dealing with GAO draft reports, along with an additional provision requiring GAO to follow statutory and executive order guidelines in its handling and storage of classified information in connection with draft report procedures.

The compromise language discussed above, particularly the language dealing with access enforcement, proved to be acceptable to the executive branch. On February 8, 1980, the Senate bill was favorably reported with these amendments.⁴⁵

After many long years, the end was now in sight. The full Senate passed S. 1878 on February 28, 1980.⁴⁶ It then passed H.R. 24 after inserting the language of the Senate bill and sending H.R. 24 back to the House. On March 19, 1980, the House of Representatives concurred in the Senate amendments to H.R. 24, thereby clearing the bill for the President.⁴⁷ President Carter signed H.R. 24 into law on April 3, 1980.

Looking to the Future

The General Accounting Office Act of 1980 was indeed a long time in the making. Will this protracted and difficult effort prove to be justified? Senator Glenn thought so when he suggested during Senate consideration that "[f]uture historians may well look upon this piece of legislation as one of the most significant to emerge from the 96th Congress."⁴⁸

GAO is now planning its approach to the section 101 unvouchered expenditure audits, and procedures to implement the section 103 requirements for draft report comments are in effect. The section 104 procedures concerning the appointment of the Comptroller and Deputy Comptroller General will be invoked very shortly. The title II inspector general provisions are self-executing.

It is likely that the acid test for the General Accounting Office Act will come down to the effectiveness of its most controversial provisions—the section 102 access enforcement remedies. The impact of section 102 may be quite subtle;

in fact, this would be the preferable result. GAO officials have made clear throughout the course of the legislation that the judicial remedies should be invoked only as a last resort after reasonable efforts at accommodation have failed, and

Congress has endorsed this approach.⁴⁹ The key benefits of section 102 should be to prevent many access disputes from ever arising and stimulating the prompt and informal resolution of those disputes which do arise.

- ¹ Public Law 96-226, 94 Stat. 311.
- ² 16 Weekly Compilation of Presidential Documents 603.
- ³ Cong. Rec. for February 28, 1980 (daily ed.), at S2062.
- ⁴ S. Rep. No. 91-1264 at p. 4 (1970).
- ⁵ *Id.* at p. 1.
- ⁶ See particularly section 204 of the Legislative Reorganization Act as amended, 31 U.S.C. §1154 (1976).
- ⁷ This act, which originated as H.R. 12113, 93d Cong., is described in more detail later in this article.
- ⁸ S. Rep. No. 91-1264, at pp. 13-14.
- ⁹ 116 Cong. Rec. 35931-34.
- ¹⁰ See letter from the Comptroller General to Chairman Eastland, of the Senate Judiciary Committee, B-167710, November 24, 1971. In fact, the GAO had drafted similar language. See letter from the Comptroller General to Chairman Celler, of the House Judiciary Committee, B-167710, August 2, 1971.
- ¹¹ The last in a series of GAO opinions on the Philadelphia Plan is published at 49 *Comp. Gen.* 59 (1969). The Attorney General's opinion to the contrary can be found at 42 *Ops. Att'y Gen.* 385 (1969). Ultimately the courts sided with the Attorney General. See *Contractors Ass'n Eastern Pennsylvania v. Secretary of Labor*, 311 Fed. Supp. 1002 (E.D. Pa. 1970) *aff'd*, 442 F2d 159 (3d Cir.), *cert. denied*, 404 U.S. 854 (1971).
- ¹² The rider was section 904 of the Supplemental Appropriations Bill, 1970, H.R. 15209. See 115 Cong. Rec. 39944 (1969).
- ¹³ The President's comments, and other aspects of the background of the bill, are discussed in Senator Ervin's remarks on introducing S.2702. See 117 Cong. Rec. 36641-42 (1971).
- ¹⁴ 119 Cong. Rec. 20656 (1973).
- ¹⁵ *Id.*, at 21861.
- ¹⁶ *Id.*, at 22432.
- ¹⁷ This title would have enacted a permanent authorization for the type of GAO study that was mandated on a one-time basis by section 408 of Public Law 91-121, 83 Stat. 204, 208 (November 19, 1969), and reported by GAO on March 17, 1971, B-159896.
- ¹⁸ See 31 U.S.C. §82b-1 (1970).
- ¹⁹ The letter to Senator Ervin is reprinted at 120 Cong. Rec. 3313-14 (1974).
- ²⁰ 120 Cong. Rec. 3313 (1974).
- ²¹ The 1974 act is Public Law 93-604, 88 Stat. 1959, approved by the President on January 2, 1975.
- ²² 121 Cong. Rec. 26794 (1975).
- ²³ 121 Cong. Rec. 25608 (1975). An earlier bill by Senator Metcalf—S. 1278, 93d Cong.—also provided for congressional appointment of the Comptroller General, Deputy Comptroller General, and the officials covered by S. 2205.
- ²⁴ 121 Cong. Rec. 22668-69 (1975). GAO also opposed the changes proposed by H.R. 8616 with respect to the Comptroller and Deputy Comptroller General. See letter from Mr. Staats to Chairman Hayes, Committee on House Administration, B-177913, November 5, 1975.
- ²⁵ A letter from the Comptroller General to Chairman Brooks, House Committee on Government Operations, dated May 24, 1976, B-167710.
- ²⁶ Public Law 93-275, 88 Stat. 96.
- ²⁷ Public Law 94-163, Title V, 89 Stat. 871, 956 (Dec. 22, 1975), 42 U.S.C. §§6381-6384.
- ²⁸ Public Law 95-142, §6, 91 Stat. 1175, 1192 (Oct. 25, 1977).
- ²⁹ Public Law 95-91, §207, 91 Stat. 565, 574 (August 4, 1977).
- ³⁰ This act added a new subsection (d) to section 117 of the Accounting and Auditing Act of 1950, 31 U.S.C. §67.
- ³¹ This act added a new subsection (e) to section 117 of the Accounting and Auditing Act.
- ³² B-167710, February 28, 1978.
- ³³ The retirement bill was introduced in the House as H.R. 12196 and in the Senate as S. 3412, 95th Cong. This legislation was enacted as the "Comptroller General Annuity Adjustment Act of 1978," approved October 25, 1978, Public Law 95-512, 92 Stat. 1799. The personnel legislation was considered during 1978 and 1979 and was enacted on February 15, 1980, as the "General Accounting Office Personnel Act of 1980," Public Law 96-191, 94 Stat. 27.
- ³⁴ This bill was H.R. 2422, 95th Congress. In a letter to Chairman Brooks dated May 10, 1977, B-167710, GAO supported H.R. 2422. In prior years, Mr. Eckhardt had proposed appropriation limitations to prevent the use of unvouchered funds without provision for GAO audits.
- ³⁵ Hearings before a Subcommittee of the Committee of Government Operations, House of Representatives 95th Cong. 2d Sess., on H.R. 12171, entitled, "Strengthening Comptroller General's Access to Records; New Procedure for Appointment."
- ³⁶ H.R. Rep. No. 95-1586.
- ³⁷ Cong. Rec. for October 3, 1978 (daily ed.), at H11358-60.
- ³⁸ Congressional Record for January 15, 1979 (daily ed.), H52.
- ³⁹ See Hearing Before a Subcommittee of the House Committee on Government Operations, 96th Cong., 1st Sess., on H.R. 24, General Accounting Office Act of 1979 (June 19, 1979), at pp. 30-39.
- ⁴⁰ *Id.*, at 86-117.
- ⁴¹ H.R. Rep. No. 96-425 (1979).
- ⁴² Cong. Rec. for October 29, 1979 (daily ed.), H9835-57.
- ⁴³ Cong. Rec. for October 11, 1979 (daily ed.), at S14439-40.
- ⁴⁴ See Hearings Before the Subcommittee on Energy, Nuclear Proliferation, and Federal Services of the Senate Committee on Governmental Affairs, 96 Cong., 1st Sess. on S.1878 and S.1879, *GAO Legislation*.
- ⁴⁵ S. Rep. No. 96-570 (1980).
- ⁴⁶ Cong. Rec. for February 28, 1980 (daily ed.), at S2059-62.
- ⁴⁷ Cong. Rec. for March 19, 1980 (daily ed.), at H1973-76.
- ⁴⁸ Cong. Rec. for February 28, 1980 (daily ed.), at S2061.
- ⁴⁹ See, for example, H.R. Rep. No. 96-425, 7 (1979); S. Rep. No. 96-570, 8 (1980).